U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30727567

Date: MAY 15, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria, and he did not demonstrate his intent to continue work in his area of expertise in the United States. Subsequently, the Director dismissed the Petitioner's combined motion to reopen and reconsider. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to have satisfied four of these criteria, but the Director determined the Petitioner fulfilled only two: published material at 8 C.F.R. § 204.5(h)(3)(iii) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).[1] On appeal, the Petitioner maintains that he meets an additional two relating to original contributions at 8 C.F.R. § 204.5(h)(3)(v) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). For the reasons discussed below, the Petitioner has shown he fulfills at least three categories of evidence.

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." USCIS first determines whether the person has authored scholarly articles in the field. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. Scholarly articles are also generally peer reviewed by other experts in the field of specialization. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual. For other fields, a scholarly article should be written for learned persons in that field. Learned persons include all persons having

[1] Although not claimed by the Petitioner, the Director determined the Petitioner provided evidence but did not establish eligibility for the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

profound knowledge of a field. *Id.* Here, the Petitioner provided sufficient evidence demonstrating his authorship of articles containing characteristics of scholarly material.

Second, USCIS determines whether the publication qualifies as a professional publication, major trade publication, or major media publication. In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media). *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1). Here, the Petitioner's documentation reflects issuance in professional publications.

Accordingly, the Petitioner demonstrated his qualification for the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). Therefore, the Petitioner has overcome this basis for denial of the petition through fulfillment of three regulatory criteria. Nevertheless, granting the third initial criterion does not suffice to establish eligibility for classification as an individual of extraordinary ability. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish that he has sustained national or international acclaim in the field and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2]

B. Continue to Work in the Area of Expertise

Section 203(b)(1)(A)(ii) of the Act requires the individual "to enter the United States to continue work in the area of extraordinary ability." In addition, the regulation at 8 C.F.R. § 204.5(h)(5) requires that "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise" and "[s]uch evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."[3] In this case, the Petitioner provided sufficiently detailed plans explaining his intentions to continue work in his area of expertise in the United States.

Accordingly, the Petitioner has overcome this basis for the Director's denial.

III. CONCLUSION

Because the Petitioner has overcome the stated reasons for denial, we remand this proceeding so that the Director can render a final merits determination.

[2] Because the Petitioner has fulfilled three criteria, we need not decide whether he meets the original contributions criterion, and the entire record will be evaluated in the context of the final merits determination. *See also generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (indicating that in the second step of the analysis, the petitioner must demonstrate that the person has sustained national or international acclaim and that their achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).
[3] *See also generally* 6 USCIS Policy Manual, *supra*, at F.2(A)(2)

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.